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U.S. Citizenship and Immigration Services

D7

[redacted]

File: EAC 07 234 53037 Office: VERMONT SERVICE CENTER Date: OCT 29 2008

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a Texas corporation, states that it operates two Murphy's Deli restaurants. The petitioner claims to be an affiliate of Rashmi Electronics, located in India. The petitioner has employed the beneficiary in L-1A status since August 8, 2002 and now seeks to extend her status for two additional years.

The director denied the petition on two separate and independent grounds. Specifically, the director concluded that the petitioner failed to establish: (1) that the beneficiary will be employed in the United States in a primarily managerial or executive capacity; and (2) that the petitioner and the foreign entity have a qualifying relationship. With respect to the director's findings regarding the qualifying relationship, the director relied in part upon inconsistent information that was provided by the petitioner in connection with an I-140 petition previously filed on the beneficiary's behalf (SRC 04 169 50818), as well as on information obtained by the Fraud Prevention Unit of the U.S. Consulate in Mumbai during the course of an overseas investigation of the foreign entity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner submitted sufficient evidence to establish that the beneficiary has been and will be employed in a managerial and executive capacity. Counsel further asserts that the information obtained during the course of the overseas investigation was false, and submits additional documentary evidence in support of its claim that the U.S. and foreign entities continue to have a qualifying affiliate relationship.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issued to be address is whether the petitioner established that the beneficiary will be employed by the United States entity in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), defines the term "managerial capacity" as an assignment within an organization in which the employee primarily:

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), defines the term "executive capacity" as an assignment within an organization in which the employee primarily:

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the nonimmigrant petition on August 7, 2007, and stated on the Form I-129 that it employed seven workers at that time. In a letter dated August 3, 2007, the petitioner provided the following description of the beneficiary's duties as president of the U.S. company:

> [H]iring and firing managers; reviewing retail locations for acquisitions; reviewing feasibility reports prepared by subordinate employees for prospective locations; negotiating with business brokers and prospective sellers to acquire retail locations; supervising subordinate employees; overseeing preparation of sales and inventory reports; reviewing and analyzing sales data; establishing and implementing policies to manage and achieve marketing goals; review financial reports; review budgets and expense reports prepared by subordinate employees; managing the company; and overseeing marketing campaign developed by subordinate managers.
>
> In the performance of her duties, the Beneficiary will received minimum supervision from the Board of Directors. Beneficiary will exercise wide discretion and latitude in the performance of her duties.

On October 2, 2007, the director issued a request for additional evidence (RFE), in which he instructed the petitioner to submit, *inter alia*, the following: (1) a comprehensive description of the beneficiary's proposed duties; (2) a list of the U.S. company's employees by name and position title; (3) a complete position description for all company employees, including a breakdown of the number of hours devote to each of the employee's job duties on a weekly basis; (4) an organizational chart for the U.S. company; and (5) copies of the petitioner's IRS Forms 941, Employer's Quarterly Federal Tax Return, for the previous year.

In a letter dated December 14, 2007, submitted in response to the RFE, the petitioner reiterated the position description submitted in its August 3, 2007 letter. The petitioner further explained the beneficiary's role in the company as follows:

> Petitioner operates two (2) Murphy Delis. The first one is located in Houston, Texas and the other is located in San Antonio. As the President, Petitioner will be the senior most executive officer and she will be managing or supervising at least two (2) store managers, each of whom will mange [sic] and supervise subordinate mangers [sic]. The Beneficiary will not engage in the actual customer services or productions but instead will provide guidance and direction for the organization and management of the Petitioner as well as engage and plan activities to expand Petitioner's business form [sic] two (2) locations to four (4) locations in the next three (3) years. Because the Petitioner employs six (6) employees who are subordinate to the Beneficiary, the Beneficiary has sufficient staff of supervisory personnel who relieve her from performing day to day operations.

The petitioner provided a franchise agreement dated December 10, 2005 between Murphy's Deli Franchising, Inc. and Rapaco II, LLC as franchisee, for the Murphy's Deli located in San Antonio, Texas. Rapaco II, LLC's name was crossed out and the petitioner's name was handwritten in throughout the agreement, and the beneficiary signed the agreement on behalf of the petitioner on the same pages where Rapaco II, LLC officer had previously signed. The petitioner did submit a Texas Sales and Use Tax Permit for the San Antonio location, effective February 1, 2006. The petitioner also submitted a Certificate of Occupancy indicating that it is doing business as "Murphys's Deli Downtown" at the San Antonio location. However, the certificate is dated August 18, 2004 and pre-dates the franchise agreement.

The petitioner's response also included a copy of the management agreement between the petitioner and [redacted]. which was dated June 1, 2006. Under the agreement, the petitioner is charged with managing a Murphy's Deli restaurant located in Houston, Texas. The owner, [redacted]., is entitled to receive 80% of the net profits from the business.

The petitioner provided a list of employees which included two store managers ([redacted] and [redacted] who are responsible for: overseeing and managing their respective stores; preparing bank deposits; reconciling accounts and preparing daily sales reports; preparing work schedules; maintaining store inventory and equipment; ordering supplies; coordinating marketing, pricing and sales activities; resolving customer complains; and reporting to the "owner" on a weekly basis. The petitioner indicated that the San Antonio store manager ([redacted]) supervises one assistant manager, one sandwich maker, and one stocker/sandwich maker, while the Houston store manager ([redacted] supervises two sandwich makers. All of the listed employees were reported on the petitioner's Texas Form UCT-6, Employer's Quarterly Report, for the third quarter of 2007, although the wages for two of the sandwich makers were less than $200.

The director denied the petition on March 31, 2008, concluding that the petitioner failed to establish that the beneficiary will be employed in a primarily managerial or executive capacity. In denying the petition, the director noted that the petitioner had not established that the subordinate employees would relieve the beneficiary from performing the non-managerial, day-to-day operations associated with operating two delis. Rather, the director concluded that the beneficiary would more likely than not be involved in performing non-qualifying tasks with first-line supervisory duties over non-professional employees. The director also questioned the legitimacy of the franchise agreement submitted for the San Antonio Murphy's Deli location, observing that the franchisee's name was crossed out and the petitioner's name was written in by hand.

On appeal, counsel for the petitioner asserts that the beneficiary will be employed in both a managerial and an executive capacity for the petitioning company. Counsel asserts that the beneficiary supervises the work of a store manager and two assistant managers, who serve as first-line supervisors of a stocker and a sandwich maker. Counsel asserts that the beneficiary "exercises discretion over the day-to-day operations" and is not actually involved in such activities, and that she "functions at a senior level within the petitioner's organizational hierarchy."

Counsel further contends that the beneficiary serves in an executive capacity because she makes "imperative decisions for the Corporation, including opening or closing store locations." Counsel states that it is "worth mentioning" that the Houston Murphy's Deli location was closed in December 2007 because it was not

profitable. Counsel further states "though it was operating for over two years [the beneficiary] made the decision that it was best to close this location instead of becoming burdensome on [the petitioner] to continue in operation."

In support of the appeal, the petitioner submits an updated organizational chart for the U.S. company which depicts the beneficiary as president, a store manager, two assistant managers, one sandwich maker, and one stocker. The petitioner also provides a copy of its Texas quarterly wage report for the first quarter of 2008, which shows that the petitioner employed five to six employees during the quarter.

Finally, counsel addresses the franchise agreement between Rapaco II, LLC and Murphy's Deli Franchising, Inc., on which Rapaco II, LLC's name was crossed out and the petitioner's name was written in. Counsel asserts that the document was lawfully altered, but submits as supplemental evidence an Assignment and Assumption Agreement dated April 21, 2008 between Rapaco and the petitioner, which shows that on that date, Murphy's Deli Franchising, Inc. consented to the assignment of the franchise and sublease agreement to the petitioning company. Counsel asserts that this evidence "verifies the assignment and acknowledges that the owner of Murphy's Deli San Antonio is [the beneficiary]."

Counsel's assertions are not persuasive. Upon review of the petition and the evidence, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* The definitions of executive and managerial capacity each have two basic parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary *primarily* performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991).

Here, the petitioner's description of the beneficiary's duties is insufficient to establish that the beneficiary would be employed in a primarily managerial or executive capacity. Several of the beneficiary's duties relate to the expansion of the petitioner's business to include other retail locations and the petitioner claimed that the company is seeking to expand from two to four locations. Specifically, the petitioner indicates that the beneficiary will be reviewing retail locations for acquisitions; reviewing feasibility reports prepared by subordinate employees; and negotiating with business brokers and prospective sellers. However, the petitioner submitted no documentary evidence to establish that the beneficiary is in fact engaged in such expansion activities. The petitioner has been established since 2002 and currently operates one location; therefore, without evidence that the beneficiary is actively engaged in such negotiations with prospective sellers, these duties are not credible. Furthermore, the job descriptions submitted for the beneficiary's subordinates do not indicate that these employees actually prepare feasibility reports for the beneficiary's review, as stated in the beneficiary's job description.

The remainder of the beneficiary's duties are vague and nonspecific, and include such tasks as "hiring and firing managers," "managing the company," "establishing and implementing policies," reviewing financial, budget and expense reports, and exercising "wide discretion and latitude in the performance of her duties." These duties provide little insight into what the beneficiary actually does on a day-to-day basis and fall short of establishing that her actual duties are primarily managerial or executive in nature. Reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner has failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Although the director specifically requested that the petitioner submit a comprehensive description of the beneficiary's duties and provide a breakdown of how she allocates her time among her various responsibilities, the petitioner re-submitted the same deficient position description in response to the RFE. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Based on the current record, the AAO is unable to determine whether the claimed managerial duties constitute the majority of the beneficiary's duties, or whether the beneficiary primarily performs non-managerial administrative or operational duties. Although specifically requested by the director, the petitioner's description of the beneficiary's job duties does not establish what proportion of the beneficiary's duties is managerial in nature, and what proportion is actually non-managerial. *See Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). The petitioner's assertions that the beneficiary will not engage in non-qualifying assertions are insufficient in light of the director's specific request that the petitioner delineate the beneficiary's specific job duties and the amount of time she will devote to them. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, counsel essentially paraphrases the statutory definition of managerial capacity in an attempt to establish that the beneficiary qualifies for the benefit sought, and further asserts that the beneficiary qualifies as an executive because she made the decision to close the petitioner's alleged Houston, Texas operations in December 2007. However, counsel's assertions are unpersuasive for two reasons. First, the petitioner's response to the director's RFE was received on December 24, 2007, and at that time, the petitioner, through former counsel, unequivocally stated that the petitioner was operating and managing two Murphy's Deli locations. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Second, the minimal evidence submitted with respect to the Houston, Texas operation shows that the petitioner was managing that business pursuant to an agreement with the business's owner, [redacted]. Counsel's claim on appeal that the beneficiary made the decision to close this business is not credible, considering that another, unrelated company in fact owns the business, and the management agreement invests neither the petitioner nor the beneficiary with the authority to make such decisions. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. Furthermore, the

record contains very little evidence to establish the petitioner's involvement with this business, other than the management agreement and a single invoice for rent for the month of June 2007, which does not specifically refer to the petitioning company, but simply to "Murphy's Deli."

Overall, the petitioner description of the beneficiary's duties falls significantly short of establishing that she will be employed in a primarily managerial or executive capacity. Furthermore, the petitioner's vague description of the beneficiary's duties cannot be viewed in the abstract. When examining the managerial or executive capacity of a beneficiary, Citizenship and Immigration Services (CIS) reviews the totality of the record, including descriptions of a beneficiary's duties and those of his or her subordinate employees, the nature of the petitioner's business, the employment and remuneration of employees, and any other facts contributing to a complete understanding of a beneficiary's actual role in a business. The evidence must substantiate that the duties of the beneficiary and his or her subordinates correspond to their placement in an organization's structural hierarchy; artificial tiers of subordinate employees and inflated job titles are not probative and will not establish that an organization is sufficiently complex to support an executive or manager position. An individual whose primary duties are those of a first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act.

At the time of filing, the petitioner indicated that the beneficiary's worksite would be at the company's Houston, Texas restaurant, which was claimed to employ a store manager and two sandwich makers. The petitioner indicated that the beneficiary would also oversee the operations of its San Antonio location, which was claimed to have a manager, assistant manager and two sandwich makers. The petitioner did not explain, however, how the Houston store manager and two part-time sandwich makers were able to perform all, or even most, of the non-managerial, operational functions associated with operating a deli that is likely open for business seven days a week for 8 to 12 or more hours daily. Rather, for such a business to operate with four employees, it is reasonable to expect that all employees would necessarily primarily engage in production and customer-service duties in order for the business to remain operational. Collectively, this brings into question how much of the beneficiary's time can actually be devoted to managerial or executive duties. As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. *See* sections 101(a)(44)(A) and (B) of the Act.

Counsel asserts on appeal that the petitioner now operates a single store with a president, a manager, two assistant managers, one sandwich maker and one stocker. However, notwithstanding the job titles given to the beneficiary's subordinates, the petitioner has not explained why a deli/sandwich shop would employ four "managers" and only one sandwich maker. An employee will not be considered to be a supervisor simply because of a job title, because he or she is arbitrarily placed on an organizational chart in a position superior to another employee, or even because he or she supervises daily work activities and assignments. Rather, the employee must be shown to possess some significant degree of control or authority over the employment of subordinates. Given the size and nature of the petitioner's business, it is more likely than not that the beneficiary and her subordinate employees will all primarily perform the tasks necessary to the operation of the business. *See generally Family, Inc. v. U.S. Citizenship and Immigration Services*, 469 F.3d 1313 (9th Cir. 2006). Therefore, it appears that the beneficiary will be, at most, a first-line supervisor of non-

professional employees.[1] A managerial or executive employee must have authority over day-to-day operations beyond the level normally vested in a first-line supervisor. *See* 101(a)(44) of the Act; *see also Matter of Church Scientology International*, 19 I&N Dec. at 604.

A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in approving a visa for a multinational manager or executive. S*ee* § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). However, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that CIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F 2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS,* 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The size of a company may be especially relevant when CIS notes discrepancies in the record and fails to believe that the facts asserted are true. *Id.* Here, the petitioner has not established that the beneficiary's subordinate employees would relieve her of participating in the non-managerial day-to-day operations of the petitioner's retail food business and/or serving as a first-line supervisor to non-professional personnel.

Based on the foregoing discussion, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity. Accordingly, the appeal will be dismissed.

The second issue addressed by the director is whether the petitioner established that it maintains a qualifying relationship with the foreign entity. To establish a "qualifying relationship" under the Act and the regulations,

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[1] In evaluating whether the beneficiary manages professional employees, the AAO must evaluate whether the subordinate positions require a baccalaureate degree as a minimum for entry into the field of endeavor. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), states that "[t]he term *profession* shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The term "profession" contemplates knowledge or learning, not merely skill, of an advanced type in a given field gained by a prolonged course of specialized instruction and study of at least baccalaureate level, which is a realistic prerequisite to entry into the particular field of endeavor. *Matter of Sea*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968); *Matter of Shin*, 11 I&N Dec. 686 (D.D. 1966).

Therefore, the AAO must focus on the level of education required by the position, rather than the degree held by subordinate employee. The possession of a bachelor's degree by a subordinate employee does not automatically lead to the conclusion that an employee is employed in a professional capacity as that term is defined above. In the instant case, the petitioner has not neither claimed nor submitted evidence to establish that any of the beneficiary's subordinates require a bachelor's degree to perform their duties.

the petitioner must show that the beneficiary's foreign employer and the proposed U.S. employer are the same employer (i.e. a U.S. entity with a foreign office) or related as a "parent and subsidiary" or as "affiliates." *See generally* § 203(b)(1)(C) of the Act, 8 U.S.C. § 1153(b)(1)(C). Furthermore, in order to be considered qualifying organizations under the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2) a petitioner must demonstrate that the U.S. company and the foreign entity are engaged in the regular, systematic, and continuous provision of goods or services. *See* 8 C.F.R. § 214.2(l)(1)(ii)(H).

The pertinent regulations at 8 C.F.R. § 214.2(l)(1)(ii) define the term "qualifying organization" and related terms as follows:

> (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
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> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;
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> (2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee[.]
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> * * *
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> (I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.
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> (J) *Branch* means an operating division or office of the same organization housed in a different location.
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> (K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.
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> (L) *Affiliate* means
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> (*1*) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner stated on Form I-129 that the U.S. company is an affiliate of an Indian entity, [redacted], based on common ownership by [redacted], the beneficiary's spouse. The petitioner did not submit documentary evidence of the ownership and control of either company in support of the petition.

In the RFE issued on October 2, 2007, the director requested additional evidence to establish that the U.S. and foreign entities are still qualifying organizations, including evidence that both companies are presently engaged in the regular, systematic and continuous provision of goods or services, and photographs of the physical premises occupied by both entities.

In a letter dated December 13, 2007, counsel for the petitioner stated that both companies continue to do business and that both entities are wholly-owned by "[redacted]" As evidence of the ownership of the U.S. company, the petitioner submitted a document titled "Stock Certificate Number One" dated July 14, 2002, which indicates that [redacted] is the owner of all 1,000 shares of common stock authorized and issued by the company. The document is not a traditional stock certificate and appears to have been created using word processing software.

As evidence of the ownership of the foreign entity, the petitioner submitted a "Registration Certificate of Establishment" dated January 11, 2007 which indicates that [redacted]s is a trade name utilized by [redacted]. The petitioner also provided a copy of the foreign entity's expired registration certificate issued in 2005, as well as letters from the foreign entity's bank, tax preparer and accountant, who verified that [redacted] continues to be the sole proprietor of the foreign entity. The petitioner submitted documentary evidence in the form of invoices, payroll rosters, photographs and bank statements to demonstrate that the foreign entity continues to do business.

The director denied the petition, concluding that the petitioner failed to establish that the U.S. entity and the foreign entity have a qualifying relationship. The director acknowledged that the foreign entity appears to be doing business, but questioned the legitimacy of the submitted stock certificate for the U.S. entity. The director noted that the AAO and Texas Service Center had previously found discrepancies in evidence of ownership of the petitioning company submitted in support of an I-140 immigrant petition filed on behalf of the beneficiary.[2]

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[2] In a decision dated February 23, 2006, the AAO dismissed the petitioner's appeal of the denial of the I-140 immigrant petition filed on the beneficiary's behalf. The director and the AAO noted discrepancies in the record which raised questions regarding the ownership of the U.S. company. The AAO emphasized that the petitioner failed to demonstrate the means by which [redacted] purportedly acquired ownership of the U.S. company, and noted that the record contained contradictory and unsupported statements pertaining to the purchase of the petitioner's stock. The petitioner had also submitted a copy of its 2003 corporate tax return which identified the beneficiary as the sole owner of the company. Finally, the AAO found a number of

With respect to the ownership of the foreign entity, the director noted that the person who appeared to be signing the invoices, [redacted], "also claimed to be the owner of the foreign entity when contacted by the Fraud Prevention Unit at the US Consulate in Mumbai."

On appeal, counsel explains that Jignesh Sangvi is currently managing the foreign entity, and notes that Mr. [redacted] was told by the person who spoke with him that "[redacted]" had outstanding debts. Counsel asserts that [redacted] believed that the interviewer was attempting to gain information regarding Mr. [redacted]s assets, did not want to disclose personal or confidential information over the telephone, and therefore refused to answer or misled the interviewer. Counsel asserts that the consular investigator contacted Mr. [redacted] anonymously, claiming to be a local Indian bank. Counsel requests that the AAO not rely upon the information obtained from [redacted] during the course of the overseas investigation, and indicates that the petitioner is submitting documentary evidence that is "superior to any hearsay evidence unlawfully gathered by the Fraud Prevention Unit from a person who was coerced into a false answer."

In support of these assertions, the petitioner submits an affidavit from [redacted] who indicates that he responded to "annoying and fake telephone calls," from unknown persons posing as creditors or potential business partners by indicating that [redacted]s no longer exists. [redacted] asserts that [redacted] does in fact continue to own the business as its sole proprietor. The petitioner also submits an affidavit from [redacted], who states that although he has been in the United States since July 2002, he continues to file his taxes in India under [redacted]s as its sole proprietor.

The petitioner also submits numerous letters from the foreign entity's bank and accountant, and a copy of a registration certificate dated February 11, 1997, which indicates that [redacted] is doing business as [redacted].

With respect to the U.S. entity, counsel states that the petitioner is attaching "a copy of the actual stock certificate signifying 1,000 shares of common stock of [the petitioning company] conveyed to Mr. [redacted]." The petitioner attaches a copy of its stock certificate #6, which indicates that 1,000 shares of the petitioner's common stock were issued to on December 1, 2005.

Upon review, the petitioner has not submitted sufficient evidence to establish the claimed affiliate relationship between the United States and foreign entities.

As a preliminary matter, the record before the AAO does not contain a copy of the investigative report issued by the Fraud Detection Unit of the U.S. Consulate in Mumbai, only the director's summary, and therefore it is impossible to draw any conclusions regarding the credibility of [redacted]'s statements that he was coerced into providing false information due to a misrepresentation on the part of the persons conducting the investigation. It is noted, however, that the petitioner's argument that [redacted] continues to own the foreign entity would be more persuasive had the petitioner provided copies of the Indian tax returns he claims to have continuously filed since his admission to the United States in 2002, or other evidence apart from letters from

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documentary inconsistencies pertaining to the foreign entity, included some documents which appeared to be altered and raised questions regarding the existence of the foreign entity and its ownership.

accountants and banks. The petitioner's assertions are not persuasive, given the considerable doubt raised by [redacted] original statements, the lack of current documentary evidence relating to the sole proprietor's tax returns, and the fact that the sole proprietor has been absent from India since 2002.

However, even if we assumed *arguendo* that the overseas entity continues to be owned and controlled by Mr. [redacted], the petitioner has not submitted sufficient credible evidence to establish that [redacted] owns the United States company. This evidentiary deficiency provides sufficient grounds for the dismissal of the petitioner's appeal.

As noted above, the petitioner submitted in response to the director's request for evidence a "stock certificate number one (1)" as evidence that [redacted] owns all issued and outstanding shares of the company's common stock. The document was dated July 14, 2002 and is not a standard form stock certificate.

The director expressed doubt regarding the authenticity of the document, based on discrepancies noted by the AAO and the Texas Service Center in connection with a previously filed immigrant petition. The petitioner has responded by submitting on appeal what is referred to as "the actual stock certificate." As noted above, the newly submitted evidence is the petitioner's stock certificate #6 issuing 1,000 shares to [redacted] and is dated December 1, 2005. The petitioner does not explain what the previously submitted stock certificate represents if it is not an "actual stock certificate." It does not explain why the newly-submitted stock certificate was not previously submitted, or why [redacted] would have received his 1,000 shares in the company more than three years after he purportedly purchased them, particularly in light of the fact that it previously claimed that the shares were issued on July 14, 2002. Finally, the petitioner makes no attempt to document the whereabouts of the petitioner's other stock certificates, particularly those numbered 2, 3 and 4, and there is no additional documentary evidence provided, such as the petitioner's stock transfer ledger.

These unexplained discrepancies, considered in light of the evidentiary deficiencies and inconsistencies that came to light when the petitioner previously attempted to document [redacted]'s ownership and control of the petitioning company in the immigrant petition proceeding, prevent the AAO from concluding that [redacted] owns the U.S. company. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Accordingly, the petitioner has not established the claimed affiliate relationship between the U.S. and foreign entities, and the petition cannot be approved for this additional reason.

The AAO recognizes that CIS previously approved three L-1A petitions filed by the petitioner on behalf of this beneficiary. The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of the petitioner's and beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). It must be emphasized that each nonimmigrant petition filing is a separate record of proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). Due to the lack of evidence of eligibility in the present record, the AAO finds that the director was justified in departing from the previous approvals by denying the present request to extend the beneficiary's status. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.") The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.